

SMALL BUSINESS LOAN ACT OF 2007
Ordinance 07-700-05

Article I. Purpose; Policy

1.01. *Purpose.* The purpose of the Small Business Loan Program is to effectively use Tribal resources to maximize the potential of citizens of the Little River Band of Ottawa Indians by providing services and support that complement and expand their business opportunities and skill levels.

1.02. *Goals.* This program is developed with the following goals –

- a. To make a positive impact on the Tribe's economy by maximizing the success of the citizen owned businesses.
- b. To assist citizens in contributing to their community and achieving self-sufficiency.
- c. To provide financial and educational resources that assist citizens in achieving a successful business that is financially viable and self-sufficient.
- d. To promote positive business endeavors by citizens which reflect the Tribe's morals, values and commitment to the Tribe's community.
- e. To ensure that the maximum number of Tribal Members have access to participate in Tribal funding opportunities.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance was adopted by Tribal Council Resolution # 07-0110-06 which repealed the Small Business Incentive Program Code, Ordinance No. 05-700-05, and replaced it with the Small Business Loan Act of 2007, Ordinance No. 06-700-05.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

a. Resolution # 07-0711-363- adopting amendments to the Ordinance which:

1. Limit participation in this program to applicants/citizens who have not received either Tribal, Grant or Consent Decree business-related funding under any other program, including but not limited to this Ordinance, the Small Business Incentive Program Code and the funds released for use in commercial fishing operations under Resolution #07-0221-____; and

2. Provide that all applicants/citizens shall meet all specific eligibility requirements set forth in Article V of this Ordinance; and

3. Provide that all applications grandfathered pursuant to Article VIII of this Ordinance shall meet all of the requirements of this Ordinance, including the eligibility requirements set forth in Article V of this Ordinance, but excluding subsection (f) of Article V; and

4. Confirms and clarifies that the Small Business Incentive Program Code was repealed by Resolution #07-0110-06 and replaced by this Small Business Loan Act of 2007 and;

5. Changes the Ordinance Number of the Small Business Loan Act of 2007 from 06-700-05 to 07-700-05, to conform to the Administrative Procedures Act and the date the Ordinance was adopted by Tribal Council; and

6. Corrects errors in renumbering provisions contained in Article VIII and moves Sections 8.11 and 8.12 to Article IX, Development and Lease Agreements, Sections 9.01 and 9.02.

b. Resolution #07-1017____, repealing the Emergency Amendments adopted by Resolution #07-0711-363 and replacing that Ordinance with this Amended Ordinance.

2.03. *Repeal*. This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.04. *Severability*. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

3.01. *General*. As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

3.02. *Business owner* means a citizen of the Little River Band of Ottawa Indians who is the owner of a business operated for profit.

3.03. *Applicant* means a citizen of the Little River Band of Ottawa Indians who is applying for a loan under this program who is, or will be, a business owner, and who meets all eligibility requirements under Article V of this Ordinance.

3.04. *Citizen* means an individual who is an enrolled member of the Little River Band of Ottawa Indians in accordance with Article II of the Constitution who meets all eligibility requirements under Article V of this Ordinance.

3.05. *Commerce Commission* means the entity created in the Commerce Commission Ordinance.

3.06. *Eligibility period* means the 12 (repayment incentive) or 24 month (employment incentive) period during which an applicant, having received a program loan, is eligible for incentive reductions to the program loan as set forth in this ordinance.

3.07. *Eligibility trigger date* means the date 30 days after signing the program loan documents.

3.08. *Incentive application* means the signed form, if required, or other signed document which identifies the facts and contains supporting documents to request an incentive reduction to a program loan.

3.09. *Employee* means an individual hired by a business owner, after the date of receipt of a program loan, who will work for at least 1560 hours for the business owner.

3.10. *Grandfathered applicants* means applications grandfathered in under Article VIII of this Ordinance, who meet all requirements of this Ordinance, including the eligibility requirements of Article V, *but excluding subsection (f) of Article V.*

Article IV. Types of Loans

4.01. *Loans*. The primary focus of this program is to assist applicants with obtaining financing for new business start-ups. The program also assists existing businesses in relocating to the Reservation and expansion of existing businesses. The Department of Commerce has four types of loans that it administers – mini, micro, macro and growth loans. All loans may be issued for less than the maximum amount, and all applicants may expand an existing loan to the capacity of the loan category, or, if meeting eligibility criteria for a higher loan category, may expand an existing loan into a higher loan category.

a. Mini Loan.

1. Loan for \$5,000 to \$10,000.
2. Term 4 years or less.
3. 4% simple interest.
4. 5% of the then current loan balance is forgiven for each full year of operations up to 25% of the total loan package if the business entity is located within the Little River Band of Ottawa Indians Tax Agreement Area.

b. Micro Loans.

1. Loans over \$10,000 up to \$50,000.

2. Repayment number of years based on dollar amount and repayment capability of the business.
3. 4% simple interest.
4. 5% of the then current loan balance is forgiven for each full year of operations up to 25% of the total loan package if the business entity is located within the Little River Band of Ottawa Indians Tax Agreement Area.

c. *Macro Loan.*

1. Loans over \$50,000 up to \$200,000.
2. Repayment number of years based on dollar amount and repayment capability of the business.
3. Must provide 3 years of business tax returns.
4. 4% simple interest.
5. 5% of the then current loan balance is forgiven for each full year of operations up to 25% of the total loan package if the business entity is located within the Little River Band of Ottawa Indians Tax Agreement Area.

d. *Growth Loan.*

1. Loan for a combined maximum of \$350,000 (including the existing mini, micro, or macro loan balance).
2. Repayment number of years based on dollar amount and repayment capability of the business.
3. Must provide 5 years of business tax returns.
4. 4% simple interest.
5. 5% of the then current loan balance is forgiven for each full year of operations up to 25% of the total loan package if the business entity is located within the Little River Band of Ottawa Indians Tax Agreement Area.

4.02. *Additional Loan Incentives.*

a. *Repayment Incentive.* During the first thirty-six (36) months of the loan period, for each twelve month period, if a business owner makes loan payments on time they can obtain forgiveness of 5% of the then current loan balance as a repayment incentive. The repayment incentive is available for the first 36 months of the loan repayment. One (1) late payment disqualifies an applicant for this incentive for that specific 12 month period; the applicant shall remain eligible for the next 12 month period.

b. *Employment Incentive.* An employment incentive is granted when the business owner employs, other than themselves, a citizen in the business activity during the 24 month eligibility period following the eligibility trigger date. The job created must pay a minimum of \$9.00 an hour, employ the citizen for no less than 1560 hours per 12 month period, and the applicant must be current on loan repayment. Employment incentives are allocated as follows.

1. Upon submission of eligibility certification regarding the first employee worked and received compensation for 1560 hours within a 12 month period at a minimum rate of \$9.00 per hour for the entire period an applicant receives an employment incentive forgiveness of 5% off the then current loan balance. This employment incentive may only be awarded once.
2. Upon submission of an eligibility certification regarding the employment of five citizens, each of whom has worked and received compensation for 1560 hours of work within a 12 month period individually at a minimum of \$9.00 per hour for the entire period, an applicant receives an addition employment incentive forgiveness of 2.5% off the then current loan balance. Citizens employed in this category may be the same or different employees as under the first employment incentive certification, but, each employee presented must have

individually worked 1560 hours in a 12 month period. This employment incentive may only be awarded once.

3. Upon submission of an eligibility certification regarding the employment of 10 citizens, each of whom has worked and received compensation for 1560 hours of work within a 12 month period individually at a minimum of \$9.00 per hour for the entire period, an applicant receives an addition employment incentive forgiveness of 2.5% off the then current loan balance. Citizens employed in this category may be the same or different employees as under the first employment incentive certification, but, each employee presented must have individually worked 1560 hours in a 12 month period. This employment incentive may only be awarded once.

Article V. Loan Guidelines and Eligibility

5.01. *Loan Guidelines.* To be eligible for program loan funds, the applicant/citizen must meet all of the following requirements. This Article shall apply to applications which have been grandfathered into this Ordinance pursuant to Article VIII below, and to those applicants/citizens associated with such applications unless specifically exempted.

- a. 18 years of age or older.
- b. The applicant/ citizen(s) must own 100% of the business.
- c. The applicant/citizen(s) must actively manage or control the business.
- d. The applicant/ citizen(s) has not received either Tribal, Grant or Consent Decree business-related funding under any other program, including but not limited to this Ordinance, the Small Business Incentive Program Code and the funds released for use in commercial fishing operations under Resolution #07-0221-101.
- e. The business is located and headquartered within the State of Michigan in Manistee, Mason, Wexford, Lake, Oceana, Newaygo, Muskegon, Kent and Ottawa counties.
- f. The applicant/citizen resides in the State of Michigan, provided that this subsection shall not apply to grandfathered applicants.
- g. Employment preference must be first given to citizens, descendants of citizens, and members of other federally and state historic recognized tribes.
- h. The business must be a for-profit entity.
- i. The applicant must provide a detailed business plan, marketing plan and a 3 year performa for micro loans and above.
- j. The Little River Band of Ottawa Indians shall be the lien holder on all equipment/land purchases until the loan is paid in full. Once the loan is paid in full all equipment/land liens shall be removed.
- k. Loan dollar amounts are based per business not per citizen.
- l. The Commerce Commission may require the applicant to attend Tribal approved entrepreneurship training approved by the Commerce Department.

5.02. *Loan Term Repayment Schedule.*

- a. Mini: Loan term not to exceed more than seven (7) years.
- b. Micro: Loan term not to exceed more than ten (10) years.
- c. Macro: Loan term not to exceed more than fifteen (15) years.
- d. Growth: Loan term not to exceed more than twenty (20) years.

5.03. *Category Priorities of Loans.*

- a. In the event that funding levels are insufficient to serve all qualified applicants, the Commerce Commission may develop a distribution criterion which takes into consideration such things as the amount of available funds, the level of need for each prospective participant, the amount of alternative resources available, and other factors that may impact a prospective participant's level of need.

b. In the event that the availability of lots or building space on Tribal lands is insufficient to serve all qualified applicants, the Commerce Commission may develop distribution criteria which takes into consideration such things as the amount of available lands or building space, the amount of land or building space requested by each applicant, the amount of alternative land or building space available, and other factors that may impact applicant's level of need.

5.04. *Distribution Criteria for Land & Funding.* Case numbers assigned to an application do not determine the priority of funding. The style, sector, and job creation determines funding priorities. The Little River Band of Ottawa Indians has no obligation to fund business incentive loans once the funding ceiling for the current fiscal year is reached within the program.

a. Manufacturing and Assembly businesses that create jobs for citizens in the 1836 and 1855 Reservation area, the Manistee, Mason, Wexford, Lake, Oceana, Newaygo, Muskegon, Kent and Ottawa counties.

b. Service and Retail, businesses that create jobs for citizens in the 1836 and 1855 Reservation area, the Manistee, Mason, Wexford, Lake, Oceana, Newaygo, Muskegon, Kent and Ottawa counties.

c. Consulting, home-based or Internet-based, and/or other businesses that create jobs for citizens in the 1836 and 1855 Reservation area, the Manistee, Mason, Wexford, Lake, Oceana, Newaygo, Muskegon, Kent and Ottawa counties.

d. Some types of service industry businesses create more jobs than assembly and manufacturing. Service businesses will be reviewed on a case by case basis to evaluate the number of jobs that it would create.

e. Preference will be given to job creation and applicants that have their own cash equity involved in the start up/expansion will be viewed as a more qualified applicant in the event of limited availability of funds due to budget constraints.

5.05. *Audits Required.* Recipients under this program shall be required to allow the Little River Band of Ottawa Indians, through the office of the Comptroller General, to conduct audits regarding the receipt and use of funds. The audits are solely the property of the Little River Band of Ottawa Indians and shall not be used by the business owner for any purpose.

5.06. The Commerce Commission shall have the authority to deny applicants' business proposals if they are deemed to not be feasible or not in the Tribe's best financial interest.

Article VI. Application

6.01. *Application Requirements.* To apply for a macro or growth loan, at a minimum, the following items are required:

a. Updated business plan

b. Written cost estimates,

c. A personal financial statement for each owner(s)

d. A signed loan application form

e. A signed credit application

f. 3 or 5, depending on loan product, years of historical business tax returns and financial statements

g. Business organization documents, for example –

1. Sole-proprietor, state or Tribal business registration

2. Partnership; a partnership agreement

3. Corporation; articles, ownership minutes, and or share certificates

6.02. *Use of Loan Funds.* Program loan funds can be used to establish a new business, to purchase an existing business, or expand an existing business. Specific uses include.

a. Land.

b. Land/site infrastructure.

- c. Existing building.
 - d. New construction, construction must begin within 6 months of loan receipt.
 - e. Renovations ~~renovation~~ must begin within 3 months of loan receipt.
 - f. Equipment.
 - g. Inventory, limited to 1.5 months.
 - h. Start up costs, one time costs incurred during business start up.
 - i. Working capital, based on needs of business but limited to first 2 months or less.
 - j. Equipment & Machinery; seven years or expected life whichever is shorter.
- 6.03. *Non Permitted Uses of Loan Funds.*
- a. Financing of receivables.
 - b. Additional working capital for existing businesses.
 - c. Existing debt retirement or refinancing.
 - d. Purchase or payment of personal items or personal residential purposes.
 - e. Tiered or multi-level marketing operations.
 - f. Activities that are not permitted under Tribal and local laws.
 - g. Funds are for business purposes, not for personal items.
 - h. Vehicles that are purchased with SBILP funds must be required to operate the business.
 - i. Getting to and from a job site is not a sufficient enough purpose.
- 6.04. *Owner Contribution.* The Little River Band of Ottawa Indians realizes most citizen(s) lack start-up capital and has developed this program to assist citizen(s) in the process of getting into business. It is greatly preferred and recommended that citizen(s) provide some equity.
- a. Personal cash.
 - b. Labor.
 - c. Materials.
 - d. Personal assets to be used for business.
- The Commerce Commission reviews each complete application and retains discretion to determine the amount of applicant equity required on a case by case basis.
- 6.05. *Collateral.* Loans will be secured by all business assets up to the value of the loan. If other financing sources are used the secured position can be flexible. If other financing is used, program loan funds are released only after verification of any or all other financing is complete and secure.
- 6.06. *Proper Insurance Coverage.* Applicants must show and maintain proof of insurance coverage on all business assets, liability coverage, and life insurance to cover the balance of the program loan funds.
- 6.07. *Financial Statement.* Applicants must submit monthly financial statements to the Commerce Department for the first three years and annually thereafter, or for the duration of their loan repayment. Statements must include.
- a. Profit & Loss Statement
 - b. Cash Flow Statement
 - c. Detailed Expense Report of Funds Use
- Once a loan is paid in full, the business owner has completed their obligation and is no longer required to report monthly. The business owner is requested to report on a yearly basis to the Commerce Department for statistical purposes. This process will allow the Commerce Department to gauge the overall impact on the economy and the effectiveness of the program.
- 6.08. *Expanding a Loan.* Expanding an existing program loan may be authorized if existing program funds remain, and may be authorized in the fourth fiscal quarter. The Commerce Commission has the authority to approve or deny requests to expand an existing program loan based upon the following criteria.
- a. Availability of funds.
 - b. Repayment and compliance history.

- c. Purpose for additional funds.
 - d. Business need(s).
 - e. The first time loan applicant will be given priority over applicants applying for additional funds under a new business name.
- 6.09. *Loan Restructuring*. Restructuring of loans may be requested by a business owner.
- a. To accelerate payment due to higher than expected cash flows.
 - b. To lower payment or a deferral that would prevent the business from default or going out of business.

Restructuring of loans is done on a case by case basis and depends on the Commerce Commission recommendations. The applicant may request in writing that the program modify or defer payments. A decision will be made within 15 working days from date the request is received.

6.10. *Loan Management Program*. Once funds have been committed to the applicant, the loan account will enter the Loan Management Program. This program is designed to assist the business owner with any issues, questions, and or technical assistance that they need during the duration of the loan.

Article VII. Payment

7.01. *Payment of Loans*. Loan payments will be in the form of checks or money orders payable and sent to the designated payment receiver identified in the application. The payments will be recorded on the individual loan ledgers with the Little River Band of Ottawa Indians Accounting Department. A yearly statement will be sent to each business owner concerning their annual interest paid, total of all payments received and current balance.

7.02. All payments are due on the 1st of every month. If payment does not come in on time the Commerce Department will contact the business owner by phone to see if there is a problem or if payment was inadvertently delayed. The Commerce Director will also contact the business owner to see if there are any technical issues or training assistance that needs to be addressed. If the payment is not received by the 15th of the month a written notice will be sent, stating the business owner's loan payment is overdue and the business owner must contact the Commerce Director. A late fee of \$20.00 will also be added to the account. The Commerce Director will work with the business owner and develop an action plan. The plan will be based upon the following options. The Commerce Commission shall determine which course of action is viable and best protects the assets of the Tribe.

- a. Make the payment before the next payment becomes due.
 - b. Make payment arrangements that would not harm the business or the SBILP.
 - c. Sign a garnishment agreement where outside income is available that is subject to garnishment.
 - d. If employed, sign a payroll deduction agreement.
 - e. Restructure the loan if the business has changed drastically from the original business plan.
 - f. Foreclose on the business and capture the assets secured as collateral
- 7.03. *Loan Delinquency*. If a program loan becomes 15 days delinquent, written notice will be sent via certified mail to the business owner. If payment is 30 days late a written default letter is sent by certified mail.

If after all attempts to collect, up to 45 days past due the date of a loan payment, have failed, the Commerce Director shall report the necessary information and proof of attempts to collect payments, and recommendations on how to proceed with the delinquent loan to the Commerce Commission. The Commerce Commission will then make a final determination of action and notify the borrower. The Commerce Commission will proceed with any and all actions to secure property, assets, judgments, and liens via Tribal Court, or State Court, including garnishment of Federal and State tax returns.

7.04. *Overview of Delinquency Process.*

- a. A 15-day written delinquency notice is sent.
- b. A 30-day written default notice is sent.
- c. A 45-day default notice is filed.
- d. The business is assessed to identify problem or issues.
- e. Restructuring of loan request, if filed, is given to Commerce Commission for consideration.
- f. If approved, an action plan to improve conditions is implemented with the business owner.
- g. Continued business failure to repay program loan will result in Commerce Commission action to recover the program loan.
- h. Evaluate the situation leading to business failure.

Article VIII. Prior Programs

8.01. *Grand Father Clause.* Applications under the Small Business Incentive Program Code on file with the Department of Commerce or approved under the previous grant program as of January 10, 2007 shall be incorporated into this program as set forth in this Ordinance.

8.02. *Loan Eligibility.* Grandfathered applications shall be eligible, if approved, for a grant in an amount no greater than \$200,000.00. The applicant/citizen shall be required to meet all requirements of this Ordinance, including the eligibility requirements set forth in Article V, excluding subsection (f) of Article V.

8.03 *Application Approval.* Grandfathered applications shall receive final review by the Commerce Commission, regardless of any review conducted by a prior entity under a prior program.

8.04 *Reporting Requirements.* Grandfathered applications and/or previously approved grant applications shall report on a monthly basis to the Department of Commerce. The reports shall include profit & loss statement, cash flow statement, and a detailed report on grant funds spent during the previous month. All reports shall be submitted not later than the 15th day of each month. All Grandfathered applications and or previously approved grant applications shall submit to a yearly audit conducted by the Little River Band of Ottawa Indians this audit shall only be for the purpose of the Little River Band of Ottawa Indians and shall not be used to obtain any outside financing and certifications.

8.05. *Acquisition of New Lands.* Applicants requesting program assistance for the purpose of acquiring real property to which the applicant proposes to re-locate its business operations must meet the following threshold requirements:

a. *Business Requirements.*

1. Demonstrate (through tax returns or other evidence) that the business entity (including any predecessor entities, i.e. sole proprietorship, partnership, etc.) has been engaged in business for not less than 2 years at some other business location(s) and has been owned by a Tribal member for at least the same period of time prior to filling the application for funds;
2. Proof that the business entity is currently wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians;
3. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe;
4. A description of the business' current operations (including location, facilities, number of employees, product(s)/service(s)); and

5. Identification of the parcel of real property meeting the criteria described in subsection (b). Applicants may submit more than 1 parcel for consideration; provided that the selection of the parcel to be pursued will be made by the reviewing official in his/her recommendation.

b. *Property Requirements.* Applicants for program assistance are responsible for providing documents demonstrating that the real property proposed for acquisition with Program funds meets the following requirements:

1. The property is available for purchase. (i.e. copy of the MLS listing information or similar fact sheet);
2. The proposed business activity is compatible with applicable land use plans and authorized by applicable zoning ordinances;
3. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities, and access;
4. The total cost of acquiring the parcel, including the cost of necessary due diligence (i.e. Phase I Environmental Assessment; Survey; Building Inspections) does not exceed to the maximum amount of Program assistance authorized. The amount of any equity contribution toward the purchase price, which the applicant is committing, shall be considered in making this determination.
5. Verification that the parcel is located within the exterior boundaries of the Reservation;

8.06. *Lease and Improvement of Tribal Lands.* Applicants requesting Program assistance for the purpose of financing the cost of improvements to a designated parcel of land within the Reservation which is owned by the Tribe to which the applicant proposes to re-locate his/its business must meet the following threshold requirements:

a. *Business Requirements.*

1. Demonstrate (through tax returns or other evidence) that the business entity (including any predecessor entities, i.e. sole proprietorship, partnership, etc.) has been engaged in business for not less than 2 years at some other business location(s) and has been owned by a Tribal member for at least the same period of time prior to filling the application for funds;
2. Proof that the business entity is currently wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians;
3. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe;
4. A description of the business' current operations (including location, facilities, number of employees, product(s)/service(s); and
5. Identification of the parcel of Tribal land meeting the criteria described in subsection (b). Applicants may identify more than 1 parcel for consideration; provided that the selection of the parcel to be pursued will be made by the reviewing official in his/her recommendation.

b. *Property Requirements.* Applicants for program assistance are responsible for providing documents demonstrating that the Tribal parcel proposed for lease and improvement with Program funds meets the following requirements:

1. The parcel has been designated for use for commercial purposes and is available for lease and that the proposed business activity is compatible with applicable land use plans and zoning ordinances;
2. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities, and access;

3. The total cost of improving the parcel, including the cost of necessary due diligence (i.e. Phase I Environmental Assessment; Survey; Building Inspections) does not exceed to the maximum amount of Program assistance authorized. The amount of any equity contribution toward the cost of improving the property, which the applicant is committing, shall be considered in making this determination.

8.07. *Lease of Tribal Lands (with Improvements Financed by the Applicant)*. Applicants requesting authorization to lease Tribal land, or space within existing Tribal facilities, to which the applicant proposes to relocate its business must meet the following threshold requirements:

a. *Business Requirements*.

1. Demonstrate (through tax returns or other evidence) that the business entity (including any predecessor entities, i.e. sole proprietorship, partnership, etc.) has been engaged in business for not less than 2 years at some other business location(s) and has been owned by a Tribal member for at least the same period of time prior to filling the application for funds;
2. Proof that the business entity is currently wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians;
3. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe;
4. A description of the business' current operations (including location, facilities, number of employees, product(s)/service(s)); and
5. Identification of the parcel of Tribal land meeting the criteria described in subsection (b). Applicants may identify more than 1 parcel for consideration; provided that the selection of the parcel to be pursued will be made by the reviewing official in his/her recommendation.

b. *Property Requirements*. Applicants are responsible for providing documents demonstrating that the Tribal parcel (or building space) proposed for lease and improvement by the applicant meets the following requirements:

1. The parcel (or building space) has been designated for use for commercial purposes and is available for lease and that the proposed business activity is compatible with applicable land use plans and zoning ordinances;
2. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities, and access.

8.08. *Start-Up Capital for New Businesses or operating capital to existing business relocating to locations within the Reservation*. Applicants requesting Program assistance for the purpose of obtaining contributions of start-up capital for new businesses proposed by Tribal members or operating capital to existing business currently located within the Reservation or relocating to locations within the Reservation must meet the following threshold requirements:

a. *Business Requirements*.

1. Proof that the business entity is, or will be, wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians;
2. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe;
3. A description of the business' proposed operations (including location, facilities, number of employees, product(s)/service(s)); and
4. Identification of the location proposed for the business, including any parcel(s) of Tribal land meeting the criteria described in subsection (b).

b. *Property Requirements.* Applicants for program assistance are responsible for providing documents demonstrating that they have identified suitable land/facilities within the Reservation. Applicants seeking to locate their business on Tribally-owned lands must identify a parcel which meets the following requirements:

1. The parcel has been designated for use for commercial purposes, is available for lease and that the proposed business activities) is compatible with applicable land use plans;
2. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities, and access;
3. The total cost of improving the parcel, including the cost of necessary due diligence (i.e. Phase I Environmental Assessment; Survey; Building Inspections) does not exceed to the maximum amount of Program assistance authorized. The amount of any equity contribution toward the cost of improving the property, which the applicant is committing, shall be considered in making this determination.

8.09. *Start-Up Capital for New Businesses or operating capital to existing business relocating to locations within the Reservation.* Applicants requesting Program assistance for the purpose of obtaining contributions of start-up capital for new businesses proposed by Tribal members or operating capital to existing business currently located within the Reservation or relocating to locations within the Reservation must meet the following threshold requirements:

a. *Business Requirements.*

1. Proof that the business entity is, or will be, wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians;
2. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe;
3. A description of the business' proposed operations (including location, facilities, number of employees, product(s)/service(s)); and
4. Identification of the location proposed for the business, including any parcel(s) of Tribal land meeting the criteria described in subsection (b)

b. *Property Requirements.* Applicants for program assistance are responsible for providing documents demonstrating that they have identified suitable land/facilities within the Reservation. Applicants seeking to locate their business on Tribally-owned lands must identify a parcel which meets the following requirements:

1. The parcel has been designated for use for commercial purposes, is available for lease and that the proposed business activities are compatible with applicable land use plans;
2. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities, and access;
3. The total cost of improving the parcel, including the cost of necessary due diligence (i.e. Phase I Environmental Assessment; Survey; Building Inspections) does not exceed to the maximum amount of Program assistance authorized. The amount of any equity contribution toward the cost of improving the property, which the applicant is committing, shall be considered in making this determination.

8.10. *Eligibility Determinations; Criteria.* In making recommendations for Program assistance, the Commerce Commission must determine that the document submitted by the applicant reasonably demonstrates:

- a. Applicant will have the ability to make lease payments equivalent to those that would be required under a triple-net lease upon a 10 year amortization schedule (at prevailing interest rates for commercial loans available from National City Bank of the Midwest) of the total amount of Program funds allocated to the purchase and/or improvement of the real property.
- b. The applicant has the ability to finance the construction of the real property improvements necessary to meet the business' requirements.
- c. That the applicant currently owns or has the ability to finance the acquisition of any fixtures, equipment and materials not covered by Program assistance, which is necessary to meet the business' requirements.
- d. That the acquisition of the parcel is consistent with any applicable land use acquisition priorities established by the Tribe.
- e. The business activities proposed are consistent with any applicable Tribal land use plans.
- f. That the applicant, who is already an established business has, prior to the receipt of program assistance, contributed, equity or capital in its business in amount not less than 20% of the amount of program funding requested. This requirement does not apply for start-up operations.
- g. Confirm that substantially the entire applicant's business operations (manufacturing/assembly; service delivery and/or warehouse/showroom) will be located on, or relocated from their present location to, the proposed location on the Reservation.
- h. Verify that the applicant and/ or business has not have received funds from the Program for a period of 5 years prior.
- i. Verify that the applicant/citizen meets all eligibility requirements set forth in Article V of this Ordinance.

Article IX. Development and Lease Agreements.

9.01. *Development Agreement.* As a condition of receiving financial assistance from this program, applicants shall be required to execute a Development Agreement which contains the following terms:

- a. Clearly identifies the parties to the agreement, which must include: the applicant, the legal entity which will own and operate the business, and the capacity of each person/entity to enter into the development agreement;
- b. Identifies the property on which the business will be operated;
- c. Identifies the business activities the applicant will be permitted to engage in on the property, including any activities or uses specifically prohibited;
- d. A commitment by the applicant to carry out the goals set forth in its business plan;
- e. Specifies project commencement and completion dates, either for the project as a whole, or for various phases and commits the applicant to maintaining that project schedule. The project schedule should require the applicant to:
 - 1. Re-locate its business operations to the new location within a specified period of time;
 - 2. If applicable, commence construction of improvements within a specified period of time;
 - 3. Commence business operations at its new location on the Reservation within a specified period of time.
- f. Provide for periodic review of the applicant's progress in order to determine compliance with the terms of the development agreement.
- g. Require the applicant to make periodic progress reports to the Commerce Director.

- h. Require the applicant to hold the Tribe, its officials, employees and agents, harmless from liability for damages, injury or death which may arise from the direct or indirect operations of the applicant.
- i. Require the applicant to re-pay the amount of program assistance if the applicant fails to re-locate substantially all of its business operations to the location identified
- j. Requires the applicant to re-pay the amount of program assistance if the applicant sells its business to a non-Tribal member or to a business entity which is not wholly-owned by Tribal members within 5 years after receipt of program funds.
- k. Grants to the Tribe, a right of first refusal with respect to any proposed sale by the applicant of its business to a non-member or a business entity which is not wholly-owned by Tribal members.

9.02. *Lease Agreements for Businesses.* As a condition of receiving financial assistance under this program and where applicable shall be required to execute a Lease Agreement which contains the following terms:

- a. A legal description of the area and, if appropriate, delineation of the square feet of building space that is subject to the lease, including a description of the lessee's right to use common areas (i.e. lobby; parking).
- b. The term of the lease, including commencement date, termination date, and right to renew the lease.
- c. The amount of or basis for calculating, monthly rental payments. The lease shall also provide for a rebate to the lessee of an amount equal to 50% of the lease payments during the first year of the lease if the lessee complied with all of the provisions in its Development Agreement.
- d. Require the lessee to keep the leased premises in good repair and to maintain insurance on the leased premises and all improvements.
- e. Lessee's agreement that any encumbrance on its leasehold interest, or to any improvements on the leased property will require approval by the Tribe and, if the property is held in trust by the United States, the Secretary of the Interior.
- f. Definition of the circumstances constituting a default, which entitle the Tribe to terminate the lease, and the Tribe's remedies upon default. Among the circumstances constituting an "event of default" shall be the lessee's failure to commence construction of improvements or to commence business operations on the leased property within the time period prescribed in the Development Agreement.
- g. Prohibits the lessee from assigning its interest in the lease without approval by the Tribe and, if the property is held in trust by the United States, the Secretary of the Interior.